the *option* which is being enforced but the contract to sell the consideration for which is the purchase price. COMMENTS (1908) 2 ILL. L. REV. 463; Holland, *Mutuality of Options* (1909) 7 MICH. L. REV. 484. Even in equity the majority view is that an option under seal is irrevocable. *O'Brien v. Boland* (1896) 166 Mass. 481, 44 N. E. 602; *Willard v. Tayloe* (1869, U. S.) 8 Wall. 557; McGovney, *Irrevocable Offers* (1914) 27 HARV. L. REV. 644. The decreasing importance of the private seal is shown by the fact that several states have passed statutes either abolishing its use or making it only presumptive evidence of consideration. Corbin, *Cases on Contracts* (1921) 477, note; see Crane, *The Magic of the Private Seal* (1915) 15 COL. L. REV. 24. But the tendency to reduce consideration itself to a mere formality, as the giving of a peppercorn, shows that formality is not obsolete. Ames, *Two Theories of Consideration* (1899) 12 HARV. L. REV. 515; 13 *ibid.* 29, 42; see Lorenzen, *Causa and Consideration in the Law of Contracts* (1919) 28 YALE LAW JOURNAL, 621. Ordinarily the power of exercising an option passes to the administrator or executor of the option-holder. *McCormick v. Stephany* (1898) 57 N. J. Eq. 257, 41 Atl. 840; Fry, *Specific Performance* (5th ed. 1911) 101; cf. *Rease v. Kittle* (1904) 56 W. Va. 269. 49 S. E. 150. But if the option is revocable, death of the option-holder operates as a revocation. *Sutherland v. Parkins* (1874) 75 Ill. 338; 13 C. J. 298. The decision in the instant case is a good example of judicial legislation which aims to do away with the common-law effect of a seal because the court considers it antiquated. A seal added to an offer does not create immunity from revocation. Would the court go so far as to hold that a seal added to a promise would not create a duty? In the absence of a controlling statute, it seems that one ought to be able to rely on a promise made under seal.

CONTRACTS—CONSTITUTIONAL LAW—RECOGNITION OF MORAL OBLIGATIONS—INCREASED COMPENSATION TO CONTRACTORS BECAUSE OF WAR COSTS.—A statute conferred upon the Court of Claims jurisdiction to make awards to contractors for increased costs incurred in the performance of contracts entered into with the state prior to the entrance of the United States into the World War. N. Y. Laws, 1919, ch. 459, sec. 6. In 1915, the plaintiff made such a contract for the repair of certain highways. Pursuant to the above provision, he filed a claim for increased costs due to war conditions. *Held,* that increased cost of performance was not a basis for a legal claim or a claim based upon equity and justice, and the statute was therefore a violation of Article III, Section 28, of the New York Constitution, which forbids the legislature to "grant any extra compensation to any public officer, servant, agent or contractor." *Gordon v. State* (1922) 233 N. Y. 1, 134 N. E. 698.

The prohibition to make awards in the nature of a gift does not prevent the legislature from recognizing claims founded on a moral obligation or on principles of equity and justice. *People v. Westchester National Bank* (1921) 231 N. Y. 465, 132 N. E. 241; *Munro v. State* (1918) 223 N. Y. 208, 119 N. E. 444. Such claims fall into three classes: (1) Services or property voluntarily rendered to the state. *O'Hara v. State* (1889) 112 N. Y. 146, 19 N. E. 659; *Trustee of Exempt Firemen's Fund v. Roome* (1883) 93 N. Y. 313. (2) Compensation for damage sustained by reason of a public work authorized by the legislature, even though such damage be *damnum absque injuria. Oswego & Syracuse Ry. v. State* (1919) 226 N. Y. 351, 124 N. E. 8; *Lehigh Valley Ry. v. Canal Board* (1912) 204 N. Y. 471, 97 N. E. 964. (3) Compensation for injuries arising out of the negligence of the servants of the state. *Munro v. State, supra.* The court attempts to confine such cases to "circumstances where, in fairness, the state might be asked to respond where something more than a mere gratuity is involved." *People v. Westchester National Bank, supra.* On this principle, compensation to a public officer for expenses incurred by him in successfully

defending a proceeding to remove him from office is not such a moral obligation as the court will recognize. *Matter of Chapman v. City of New York* (1901) 168 N. Y. 80, 61 N. E. 108. A bonus for ex-service men or a pension for teachers in recognition of past services rendered pursuant to a contract for an agreed price have been held not to be founded on principles of equity and justice. *Matter of Mahon v. Board of Education* (1902) 171 N. Y. 263, 63 N. E. 1107. But every award not founded on a legally enforceable claim is purely a gratuity and stands only on the ground of a moral obligation. A survey of the cases shows that the difference between the kind of moral obligation the court recognizes and that which it disregards is one of degree. It is difficult to see less of a moral obligation when work is performed faithfully under burdensome conditions because of the compelling force of a contract, than when work is performed voluntarily without a contract. The moral obligation when there is increased cost and difficulty of performance, has influenced some courts to sustain a promise to pay a larger sum despite a pre-existing legal duty to render the same service for a smaller sum, even in the absence of a rescission. *Munroe v. Perkins* (1830, Mass.) 9 Pick. 298; *Linz v. Schuck* (1907) 106 Md. 220, 67 Atl. 286; *King v. Duluth, M. & N. Ry.* (1895) 61 Minn. 482, 63 N. W. 1105. In the instant case the court might well have considered the degree of hardship in the performance of the public contract, and, if severe, might have brought it within the class of cases which it has recognized as founded on principles of equity and justice.

DESCENT AND DISTRIBUTION—RECEIPT FOR ADVANCEMENT—HEIR NOT BARRED FROM FURTHER SHARE IN INTESTATE'S ESTATE.—During the lifetime of his ancestor, the heir at law received from the former a sum of money for which he gave a receipt, stating that he accepted it as his entire share of the estate. The ancestor died intestate. The heir sued to recover his portion of the estate. *Held,* that the heir was not barred from participating in the distribution of the residue of his ancestor's estate, the sum previously received by him being regarded only as an advancement. *Simonds v. Simonds' Estate* (1922, Vt.) 117 Atl. 103.

At common law the mere expectancy or chance of succession of an heir apparent to his ancestor's estate at the latter's decease could not be the subject matter of release. *Needles's Executor v. Needles* (1857) 7 Ohio St. 432. Equity, however, has generally enforced such a release on either of two grounds: (1) Since valuable consideration was given for the release, some courts have held that there was a binding contract which they would not permit to be violated. *Newsome v. Cogburn* (1860) 30 Ga. 291; *Eissler v. Hoppel* (1902) 158 Ind. 82, 62 N. E. 692. (2) Other courts have invoked the doctrine of estoppel. *In re Simon's Estate* (1909) 158 Mich. 256, 122 N. W. 544; *Coffman v. Coffman* (1895) 41 W. Va. 8, 23 S. E. 523. It is generally presumed that the ancestor, relying upon the agreement, has refrained from making a will which would have excluded the heir. *Boyer v. Boyer* (1916) 62 Ind. App. 73, 111 N. E. 952. In a small minority of jurisdictions the release is held invalid on the theory that property after death must pass either by devise or descent, and that the operation of statutes governing descent cannot be defeated by any contract attempting to control the distribution of an estate. *Needles's Executor v. Needles, supra; Ferenbaugh v. Ferenbaugh* (1922, Ohio) 136 N. E. 213; *Headrick v. McDowell* (1903) 102 Va. 124, 45 S. E. 804. The decision in the instant case, following earlier precedents in the same jurisdiction, is opposed to the great weight of authority. Thornton, *Gifts and Advancements* (1893) 540; 17 Ann. Cas. 725, note. For a discussion of an analogous situation involving the assignment of an heir's expectancy to a third person, see (1922) 31 YALE LAW JOURNAL, 662.